

**STATE
FISCAL IMPACT**

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Prime Sponsor(s): Rep. Lawrence Sen. King	Bill Status: House Judiciary
	Fiscal Analyst: Kristen Koehler (303-866-4918)

SHORT TITLE: VEHICULAR HOMICIDE & ASSAULT MINIMUM SENTENCE

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue	\$0	(\$15,480)
Cash Funds - Probation Supervision Fee	\$0	(15,480)
State Expenditures	\$146,013	\$2,447,690
General Fund	118,396	2,446,658
Centrally Appropriated Costs**	27,617	1,032
FTE Position Change	1.9 FTE	0.1 FTE
Appropriation Required: \$118,396 - Office of the State Public Defender (FY 2014-15)		

* This summary shows changes from current law under the bill for each fiscal year. Parentheses indicate a decrease in funds.

** These costs are not included in the bill's appropriation. See the State Expenditures section for more information.

Summary of Legislation

This bill changes the sentencing requirements for a person convicted of vehicular homicide or vehicular assault if the person was under the influence of drugs or alcohol, or both, at the time of the accident. The bill requires the court to sentence the defendant to at least the minimum term of imprisonment in the Department of Corrections (DOC), except when a longer sentence is required by law. The bill clarifies that defendants convicted of these offenses are not eligible for probation or a suspended sentence.

Background

Under current law, vehicular homicide committed while under the influence of drugs or alcohol, or both, is a strict liability Class 3 felony. The minimum presumptive sentence for a Class 3 felony is four years imprisonment in the DOC. Vehicular assault committed while under the influence of drugs or alcohol, or both, is a Class 4 felony. The minimum presumptive sentence for a Class 4 felony is two years imprisonment in the DOC. Current law does not require that offenders convicted of these offenses be sentenced to the DOC.

State Revenue

For FY 2015-16, this bill is expected to decrease probation supervision fee revenue by approximately \$15,480.

Assumptions. The bill prohibits persons convicted of vehicular homicide or vehicular assault while under the influence (DUI) of drugs or alcohol from receiving probation or a suspended sentence. In FY 2012-13, eight offenders were convicted of vehicular homicide while under the influence and were sentenced to probation, and 106 offenders were convicted of vehicular assault while under the influence and were sentenced to probation. Under the bill, all 114 defendants who were sentenced to probation in FY 2012-13 would be sentenced instead to the DOC. The fiscal note assumes that, due to the length of the adjudication process, there will be no revenue impact in FY 2014-15.

Revenue decrease. In FY 2015-16, the bill is expected to decrease probation supervision fee revenue by approximately \$15,480. Offenders receiving probation pay a probation supervision fee of \$50 per month. On average, offenders serve 24 months in probation. Under the bill, the supervision fee will no longer be applicable. It should be noted that the indigency and payment rates of these offenders vary widely; however, typical indigency rates are between 15 percent and 35 percent and payment rates generally range from 20 to 30 percent per year. The fiscal note assumes an indigency rate of 25 percent and a payment rate of 30 percent. These assumptions have been applied to the totals in Table 1, which shows the maximum change in fee revenue under the bill.

Table 1. Decrease in Probation Supervision Fee Revenue under HB14-1158							
Fiscal Year	Number receiving probation	% Unable to Pay Fee	Number of cases the fee would be assessed on under current law	Fee revenue that would have been collected per offender (\$50*12 months)	Fee Revenue Reduction under the bill	% dollars that would have been collected by June 30	Total Revenue Reduction under the bill
2015-16	(114)	25%	86	\$600	(\$51,600)	30%	(\$15,480)
TOTAL							(\$15,480)

State Expenditures

Overall, this bill is expected to increase General Fund expenditures by \$146,013 in FY 2014-15, and by \$2,447,690 in FY 2015-16. This bill is expected to both increase and decrease state expenditures, as discussed below.

Judicial Department (trial courts). This bill is expected to increase the workload of trials courts in the Judicial Department. Each year, approximately 30 cases of vehicular homicide with DUI are filed and about 10 percent of these cases go to trial. Approximately 180 cases of vehicular assault with DUI are filed each year and about 4 percent go to trial. The fiscal note assumes that trials for vehicular assault with DUI will increase in frequency to more closely match the trial rate for vehicular homicide with DUI (10 percent). At 180 cases per year, the fiscal note assumes that at least 10 additional cases per year will go to trial for vehicular assault with DUI offenses. Under the weighted caseload model, one felony trial requires about 22 hours of court time. Adding 10 trials to the caseload per year will require 220 hours of court time, 0.10 FTE judicial officer, and 0.30 FTE support staff. The increase in workload does not require adjustments to current appropriations.

Office of the State Public Defender (OSPD). The OSPD anticipates workload increases under the bill and requires 1.9 FTE at a cost of \$146,013 in FY 2014-15 and \$137,919 in FY 2015-16. The workload of the OSPD is impacted by the change in the bill's mandatory sentencing provisions. Cases involving mandatory sentencing are more complex and require more resources to defend. This requires 1.2 FTE Deputy State Public Defender, 0.4 FTE Investigator, and 0.3 FTE Administrative Support Assistant. These costs are shown in Table 2.

Table 2. OSPD Expenditures Under HB14-1158		
Cost Components	FY 2014-15	FY 2015-16
Personal Services	\$104,510	\$104,510
FTE	1.9	1.9
Operating Expenses and Capital Outlay Costs	13,886	4,950
Centrally Appropriated Costs*	27,617	28,459
TOTAL	\$146,013	\$137,919

* Centrally appropriated costs are not included in the bill's appropriation.

Alternative Defense Counsel (ADC). The bill is likely to also increase the workload of the ADC. The ADC handles very few of these cases, when OSPD has a conflict, and in FY 2012-13, handled two vehicular homicide with DUI cases and 12 cases for vehicular assault with DUI. Increases in workload as a result of the bill are expected to be minimal and can be absorbed within existing appropriations.

Probation. In FY 2012-13, 114 offenders for vehicular assault or vehicular homicide with DUI were sentenced to probation. The fiscal note assumes the same rate of offenses in future years. Under the bill, all 114 offenders will be sentenced to the DOC. Since offenders will no longer be sentenced to probation for these offenses, there will be a decrease in expenditures of approximately \$139,394 and 1.8 FTE beginning in FY 2015-16. The FTE reduction includes 0.2 FTE probation supervisor, 1.3 FTE probation officer, and 0.3 FTE support staff. The reduction in expenditure is shown in Table 3.

Table 3. Judicial Department Reduced Expenditures Under HB14-1158		
Cost Components	FY 2014-15	FY 2015-16
Personal Services	-	(\$110,257)
FTE	-	(1.8)
Operating Expenses and Capital Outlay Costs	-	(1,710)
Centrally Appropriated Costs*	-	(27,427)
TOTAL	-	(\$139,394)

* Centrally appropriated costs are not included in the bill's appropriation.

Department of Corrections. This bill is anticipated to increase state General Fund expenditures in the DOC by \$24,131,075 between FY 2015-16 and FY 2018-19. This increase assumes eight offenders annually will be convicted of Class 3 felonies and have a standard length of stay in the DOC of 64.6 months, and that 106 offenders will be convicted of Class 4 felonies and have a standard length of stay of 46.1 months.

Under current law, offenders convicted of vehicular homicide with DUI or vehicular assault with DUI are not required to be sentenced to the DOC. The bill stipulates that these offenders must be sentenced to at least the minimum presumptive sentence under current law. Vehicular homicide committed while under the influence of drugs or alcohol, or both, is a Class 3 felony. The minimum presumptive sentence for a Class 3 felony is four years imprisonment in the DOC. Vehicular assault committed while under the influence of drugs or alcohol, or both, is a Class 4 felony. The minimum presumptive sentence for a Class 4 felony is two years imprisonment in the DOC. During FY 2012-13, eight offenders were convicted of a Class 3 felony for vehicular homicide with DUI and were sentenced to probation, and 106 offenders were convicted of a Class 4 felony for vehicular assault with DUI and were sentenced to probation. Under the bill, all 114 offenders will be sentenced to the DOC. Table 4 shows the increase in costs to the DOC as a result of the bill.

Current law prohibits the General Assembly from passing any bill to increase periods of imprisonment in state correctional facilities without appropriating an amount sufficient to cover the increased capital construction and operating costs of the bill in each of the first five fiscal years. However, current law also allows the DOC to place offenders classified as medium custody and below in private contract prisons, for which no state capital construction costs are incurred.

Offenders sentenced under this bill to DOC may be placed in either a state-run or a private contract prison, depending on several factors. Any offenders that *must* be housed in a state-run prison will likely require a shift of other inmates in that facility to private contract prisons. Therefore, this fiscal note assumes that the impact of this bill will be accommodated through the use of private contract prisons, and that no new capital construction funds are necessary.

Offenders placed in a private contract prison cost the state about \$58.86 per offender per day, including the current daily rate of \$53.74 and an estimated \$5.12 per offender per day for medical care provided by the DOC. No impact is expected in the first year because of the estimated time for criminal filing, trial, disposition, and sentencing. Table 4 shows the estimated cost of the bill over the next five fiscal years.

Table 4. Five-Year Fiscal Impact On Correctional Facilities				
Fiscal Year	Inmate Bed Impact	Construction Cost	Operating Cost	Total Cost
FY 2014-15	0.0	\$0	\$0	\$0
FY 2015-16	114.0	\$0	\$2,449,165	\$2,449,165
FY 2016-17	228.0	\$0	\$4,898,329	\$4,898,329
FY 2017-18	342.0	\$0	\$7,347,494	\$7,347,494
FY 2018-19	439.2	\$0	\$9,436,087	\$9,436,087
Total		\$0	\$24,131,075	\$24,131,075

Centrally Appropriated Costs

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 5.

Table 5. Centrally Appropriated Costs Under HB14-1158*		
Cost Components	FY 2014-15	FY 2015-16
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$11,617	\$589
Supplemental Employee Retirement Payments	7,258	443
Leased Space	8,742	0
TOTAL	\$27,617	\$1,032

*More information is available at: <http://colorado.gov/fiscalnotes>

Effective Date

The bill takes effect July 1, 2014, and applies to offenses committed on or after that date.

State Appropriations

For FY 2014-15, the Office of the State Public Defender requires an appropriation of \$118,396 General Fund and an allocation of 1.9 FTE. The Department of Corrections requires the five-year appropriation shown in Table 4.

State and Local Government Contacts

Judicial
Public Safety
Alternative Defense Counsel

Corrections
Revenue

Public Defenders
District Attorneys